

AGENDA ITEM SUMMARY	Meeting Date: 7/18/2016 Meeting Type: Regular Meeting Staff Contact/Dept.: Jeff Paschall/ Development and Public Works Staff Phone No: 541-726-1674 Estimated Time: Consent Calendar Council Goals: Maintain and Improve Infrastructure and Facilities
SPRINGFIELD CITY COUNCIL	
ITEM TITLE:	PUBLIC RIGHT OF WAY USE AGREEMENT TO ALLOW PRIVATE DEVELOPER JM HOTEL, LLC TO CONSTRUCT, OPERATE, AND MAINTAIN ONE MONUMENT SIGN AND ASSOCIATED LANDSCAPING.
ACTION REQUESTED:	Approve or reject the following motion: AUTHORIZE THE DEVELOPMENT AND PUBLIC WORKS DIRECTOR TO ISSUE A PUBLIC RIGHT OF WAY USE AGREEMENT TO JM HOTEL, LLC TO CONSTRUCT, OPERATE, AND MAINTAIN ONE MONUMENT SIGN AND ASSOCIATED LANDSCAPING.
ISSUE STATEMENT:	JM Hotel LLC, the developers of the Fairfield Inn and Suites, is requesting approval to construct a privately owned and maintained monument sign and associated landscaping within the Franklin Boulevard public right-of-way.
ATTACHMENTS:	1. Public Right of Way Use Agreement Contract # 1700 2. Photographic Depiction of Approximate Sign Location
DISCUSSION/ FINANCIAL IMPACT:	<p>Local developer JM Hotel, LLC, have proposed to build a four story 81 room Fairfield Inn and Suites in Glenwood. The new hotel will be along the south side of Franklin Boulevard just west of the existing Candlewood Suites Hotel. As part of the Development, the developers have requested to use a portion of existing public right of way to construct and operate a monument sign as well as associated landscaping.</p> <p>Chapter 3.224 of the Springfield Municipal Code provides for utilizing a public way use agreement to authorize the placement of privately owned devices or structures within a public way. The developers of the Fairfield Inn and Suites desire to use an area that is approximately 352square feet (22 feet by 16feet) located behind the south curb line of Franklin Boulevard. These facilities will be built using private funds, and maintained by JM Hotel, LLC.</p> <p>The proposed Public Way Use Agreement allows the developer to construct, operate and maintain the monument sign and landscaping in perpetuity while preserving the public's rights and releasing the City from financial liability regarding the installed facilities. The Agreement binds the developer, JM Hotel, LLC, and future heirs and successors. In the unlikely event that the facilities become problematic for the City, Section 10 of the Agreement provides the opportunity for the City to terminate the Agreement upon 60 days' notice.</p>

PUBLIC RIGHT OF WAY USE AGREEMENT

PARTIES:

CITY OF SPRINGFIELD,
a municipal corporation of the State of Oregon

Owner of the public right of way more particularly described and set forth in Exhibit A attached hereto and incorporated by reference.

JM HOTEL, LLC (“Grantee”)
a limited liability company organized under
the laws of the State of Oregon

Owner of the real property more particularly described and set forth in Exhibit B attached hereto and incorporated by reference, known as Fairfield Inn and Suites, and additional developments as may be developed, approved, or recorded.

The parties agree as follows:

Section 1 Definitions.

Section 1.1 As used in this Agreement all words and phrases shall have their customary usage and meaning, provided, however, that the following terms are defined as follows:

Section 1.1.1 “City” means the City of Springfield and all areas within its corporate boundaries, including those boundaries as may change from time to time in the future.

Section 1.1.2 “Council” means the common council of the City as set forth in Article III of the Springfield Charter.

Section 1.1.3 “Person” includes an individual, corporation, association, firm, or any other business entity having the legal authority to do business within the state of Oregon.

Section 1.1.4 “Public right of way” includes all public streets owned by the city, public utility easements granted to the city, and all other public rights of way owned by the city, as those terms are defined in SMC 4.600, but only to the extent of the city’s right, title, interest or authority to grant permission to occupy and use such rights of way.

Section 1.1.5 “Grantee’s facilities” includes, but is not limited to, permanent or semi-permanent equipment, apparatus, machinery, devices, installations, buildings, personal property, vegetation, shrubs, and trees that are installed, placed, constructed, maintained, operated, or owned by Grantee or its agent.

Section 1.1.6 “Final approved site plan” means the final site plan application for development of Grantee’s property set forth in Exhibit A, provided that such application has been approved by the City in accordance with the Site Plan Review procedures in the Springfield Development Code, and together with any and all conditions that may be imposed upon approval.

Section 1.2 As used herein, the singular number may include the plural and the plural number includes the singular.

Section 1.3 Unless expressly provided to the contrary herein or in the Springfield Municipal Code, any action authorized or required to be taken by the City pursuant to this Agreement may be taken by the Council or by the City Manager or any official or agent designated by the Council or the City Manager.

Section 2 Rights Granted.

Section 2.1 License to Install and Maintain Improvements in the Public Right of Way.

Subject to the conditions and reservations set forth herein, and the provisions of the Springfield Municipal Code, City grants to Grantee the right, privilege, and power to construct, operate, and maintain one monument sign and associated landscaping in the public right of way as shown on Exhibit C, which is incorporated herein by reference; and further grants to Grantee all other rights, privileges, and powers necessary or incident to the construction and maintenance of such facilities as defined herein.

Section 2.2 Grantee shall, before using or occupying any public right of way, obtain the consent of the City for such occupation or use by securing all appropriate permits and land use approvals, including but not limited to sign permit and encroachment permit.

Section 2.3 The rights granted herein shall not confer on Grantee any right, title, or interest in any public right of way beyond that expressly conferred by the provisions of this agreement, nor shall it confer any right or privilege to use or occupy any other property of the City or any other entity. In no circumstances shall Grantee's activities or improvements in the public right of way interfere with or limit the use of the right of way for public transportation purposes.

Section 3 Reserved Rights.

Section 3.1 The City reserves the right, without limitation, to do any of the following:

Section 3.1.1 Construct, install, maintain, and operate any public improvement, work or facility in, on, over, or under the public rights of way;

Section 3.1.2 Perform or authorize or direct the performance of any work that the City may find desirable or convenient in, on, over, or under any public right of way;

Section 3.1.3 Vacate, alter, or close any public right of way; or

Section 3.1.4 Construct, install, maintain, and operate any public improvement, work or facility in, on, over, or under the area of the public right of way occupied by Grantee's improvements.

Section 3.2 Whenever the City shall perform or cause or permit to be performed any work in the public right of way or the vicinity of the public right of way, where such work may disturb or interfere with Grantee's facilities, the City shall notify or require its permittee to notify Grantee in writing sufficiently in advance of such contemplated work to enable Grantee to take such measures as may be deemed necessary to protect such facilities, including removal or relocation

of such facilities. Upon notification, Grantee shall take such measures as necessary to protect such facilities at its own expense.

Section 3.3 Whenever the City shall vacate any public rights of way for the convenience or benefit of any person or governmental agency and instrumentality other than the City, Grantee's rights shall be preserved as to any of its facilities then existing in such public right of way.

Section 4 Care of Facilities.

Section 4.1 Grantee shall at all times maintain and operate the facilities in a safe, substantial, and workmanlike manner, including any associated landscaping located in the public right of way. Grantee shall be responsible for maintaining any landscaping in the public right of way.

Section 4.2 Grantee's facilities shall comply with the requirements of Chapter 6 of the City's *Engineering Design Standards and Procedures Manual*.

Section 4.3 For the purpose of carrying out the provisions of this section, the City may provide such specifications relating thereto as may be necessary or convenient for the public health, safety and welfare, or for the orderly development of the City. The City may amend and add to such specifications from time to time.

Section 5 Activities in the Public Right of Way.

Section 5.1 Grantee shall obtain such permits as may be required by any applicable building code or sign code prior to commencing the construction, extension, or relocation of any of its facilities in the public right of way.

Section 5.2 Prior to commencing any construction, extension, or relocation of facilities in the public right of way, Grantee shall obtain final site plan approval from the City. In addition, to the extent not shown in the final approved site plan, the Grantee shall file drawings, in such form as may be acceptable to the City Engineer, showing the location of existing facilities and facilities to be constructed, maintained, or relocated. Following completion of such construction, extension, or relocation the Grantee shall file drawings and maps, in such form as may be acceptable to the City Engineer, showing the facilities as actually constructed, extended, or relocated. These drawings, shall NOT be part of any development applications associated with tax lots 100, 200, 700, or 500. Incorporation by reference of any site plan documents or drawings into this agreement does not constitute development approval for this or any future site plan proposals or development applications by Grantee.

Section 5.3 Except in an emergency, the Grantee shall make no excavation, opening, or other intrusion into the public right of way without having first obtained any required building permits and an encroachment permit to perform any work in the public right of way after the initial construction is concluded.

Section 5.4 In performing all work in the public right of way, the Grantee shall, at all times, conduct such work in accordance with the adopted Standard Construction Specifications of the City as then in effect.

Section 5.5 If at any time the Grantee shall make any opening, excavation or other intrusion into the public right of way, including but not limited to any opening, excavation, or intrusion in

the access road located adjacent to the monument sign, Grantee shall promptly restore the public right of way to the same condition in which it was prior to the opening, excavation or intrusion, all in accordance with the City's Standard Construction Specifications as then in effect.

Section 5.6 Should the Grantee fail to promptly make such restoration or fail to make such restoration in accordance with the City's Standard Construction Specifications, the City may, at its election, cause such restoration to be made. In such event the Grantee shall reimburse the City for the full cost of such restoration including reasonable overhead costs.

Section 6 Location and Relocation of Facilities, at Convenience of City.

Section 6.1 All facilities of the Grantee shall be placed so that they do not unreasonably interfere with the use by the City and the public of the public right of way, and in accordance with the specifications of the City governing the location of facilities.

Section 6.2 The City may require, in the public interest, the removal or relocation, temporarily or permanently, of facilities maintained by the Grantee in the public right of way of the City. The Grantee shall remove and relocate such facilities within 120 days after receiving notice in writing to do so from the City. The cost of such removal or relocation shall be paid by the Grantee.

Section 7 Safety Standards and Work Specifications.

Section 7.1 The facilities of the Grantee shall at all times be maintained in a safe, substantial, and workmanlike manner

Section 7.2 For the purpose of carrying out the provisions of this section, the City may provide such specifications relating thereto as may be necessary or convenient for public safety or the orderly development of the City. The City may amend and add to such specifications from time to time.

Section 8 Indemnification and Insurance.

Section 8.1 Grantee shall defend, indemnify and hold harmless City, its agents, servants and employees from and against all liability or loss and against all claims, demands and judgments (including attorney fees) made or recovered against them including but not limited to damages to real or tangible personal property or for bodily injury or death to any person, arising out of, or in connection with this Agreement, to the extent of such damage, injury or death is caused or sustained in connection with the location of Grantee's facilities or improvements in the public right of way or the performance of this agreement by the Grantee or its employees, servants, or agents.

Section 8.2 Grantee shall maintain in force for the duration of this Agreement a Commercial General Liability insurance policy written on an occurrence basis with limits not less than \$2,000,000 per occurrence and \$3,000,000 in the aggregate for bodily injury or property damage. The policy will contain a "per project" aggregate endorsement. Automobile Liability (owned, non-owned and hired) insurance with limits not less than \$1,000,000 per occurrence shall be maintained. The City, its employees, officials and agents will be named as an Additional Insured where operations are being conducted related to this contract, on the General Liability policy as respects to work or services performed under this Agreement to the extent that the death or

bodily injury to persons or damage to property arises out of the fault of Grantee or the fault of Grantee's agents, representatives, or employees. This insurance will be primary over any insurance the City may carry on its own. Grantee understands that the City is a public entity subject to the requirements of the Oregon Governmental Tort Claims Act, ORS 30.260 et seq. In the event that the City's financial obligations or liabilities are modified by any amendment to the liability limits imposed by the Oregon Governmental Tort Claims Act, Grantee agrees that the limits regarding liability insurance set forth in this Section 17 will be modified to conform to such limits. Grantee and City shall sign an amendment to this Agreement incorporating such modification.

Section 8.3 Evidence of the required insurance coverages issued by an insurance company satisfactory to the City shall be provided to the City by way of a City approved certificate of insurance before any work or services commence.

Section 8.4 The certificate of insurance shall contain a requirement that the Insurance company notify the City 30 days prior to any cancellation or material change in coverage. If the approved insurance company will not provide this 30 day notice, Grantee shall provide written notice to the City contract manager within 2 calendar days after Grantee becomes aware that their coverage has been canceled or has been materially changed. Grantee shall either fax to 541-726-3782 said notice or email it directly to Bob Duey (rduey@springfield-or.gov), Finance Director at the City. Regardless of what circumstances caused Grantee's insurance coverage to cease or be modified, it is Grantee's responsibility to notify the City. Failure to maintain proper insurance or provide notice of cancellation or modification shall be grounds for immediate termination of this agreement. _____ (Grantee initials).

Section 9 Assignment of Rights.

Section 9.1 Except as provided in this Section 9, Grantee shall not assign or otherwise transfer this Agreement or all or any portion of its rights or obligations hereunder to any entity, except an entity wholly owned by Grantee or by any parent of Grantee, without the prior written consent of the City. Grantee shall give City not less than 30 days' written notice of any such transfer or assignment. For the purpose of determining whether or not it will consent to such transfer or assignment, the City may, within 30 days of receiving notice of the proposed transfer or assignment, conduct a review of the financial or technical ability of the proposed transferee or assignee.

Section 9.2 This Agreement and each of the parties' respective rights and obligations under this Agreement are perpetual, shall run with the land, including tax lots 100 and 200, and any additional adjacent lots as may be recorded, and shall be binding upon and inure to the benefit of the parties hereto and each of their heirs, successors and assigns.

Section 10 Termination.

Section 10.1 Upon the failure of the Grantee, after sixty (60) days' notice and demand in writing, to perform promptly and completely any term, condition or obligation imposed upon it under or pursuant to this Agreement, the City may terminate this Agreement.

Section 10.2 The City, in its sole discretion, may terminate this agreement at any time in accordance with Section 6.2.

Section 11 Remedies.

Section 11.1 All remedies and penalties under this Agreement, including termination of the Agreement, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy or penalty. The remedies and penalties contained in this Agreement, including termination of the Agreement, are not exclusive, and the City reserves the right to enforce the provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon the Grantee by or pursuant to this Agreement. A specific waiver of a particular breach of any term, condition or obligation imposed upon the Grantee by or pursuant to this Agreement shall not be a waiver of any other or subsequent or future breach of the same or of any other term, condition or obligation, or a waiver of the term, condition or obligation itself.

Section 12 Term.

Section 12.1 This agreement shall become effective upon recordation, and shall exist as long as any improvements or facilities placed by Grantee in the public right of way are in existence, maintained, and in good repair and do not interfere with the City's use of the right of way for public purposes.

Section 12.2 Either party, by written notice, may request modification of the Agreement.

Section 13 Complete Agreement.

Section 13.1 This Agreement represents the whole agreement between the parties and shall supersede all other agreements and understandings, whether oral or in writing, between the parties with respect to the subjects covered by this agreement. This Agreement may not be modified except by a writing executed by both parties to the Agreement.

Section 14 Severability.

Section 14.1 If any provision in this Agreement is held invalid, illegal, or unenforceable, such provision shall be severed and inoperative, but the remaining provisions in this Agreement not held invalid, illegal, or unenforceable shall remain operative and binding.

IN WITNESS WHEREOF, the parties, by their duly designated representatives have executed this Agreement as of this ____ day of _____, 2016.

JM HOTEL, LLC:

CITY OF SPRINGFIELD:

By: _____
Title: _____

By: _____
Title: _____

[Notaries on following page]

STATE OF OREGON)
)
County of Lane)

Personally appeared before me this _____ day of _____, 2016 the above named
_____ as _____ of JM HOTEL, LLC and acknowledged the
foregoing instrument to be his/her voluntary act and deed.

Notary Public for Oregon

STATE OF OREGON)
)
County of Lane)

Personally appeared before me this _____ day of _____, 2016 the above named
_____ as _____ of the City of Springfield and acknowledged
the foregoing instrument to be his/her voluntary act and deed.

Notary Public for Oregon

EXHIBIT A
Description of Property Owned by Grantor

Unit 1

All that portion of the right of way boundaries of the McKenzie Highway No. 15, the McKenzie Highway No. 15AA (Connection No. 1 to the McVay Highway No. 225), the McKenzie Highway No. 15AB (Connection No. 2 to the McVay Highway No. 225) and the McVay Highway No. 225AA (Connection No. 1 to the McKenzie Highway No. 15) lying Easterly of the East City Limits of the City of Eugene at mile point 0.24 on said highway; Northwesterly of a line parallel with the 206.67 feet Southeasterly of the existing right of way center line of said highway, which center line is shown on County Survey No. 39717, filed March 6, 2006, Lane County Oregon; and Westerly of the intersection of a line at right angles to said center line with the Southwesterly corner of that property described in that deed to the State of Oregon, by and through its State Highway Commission, recorded March 14, 1949 in Book 392, page 26 of Lane County Record of Deeds, said intersection being opposite Engineer's Station 246+93.90 on said center line.

EXHIBIT B
Description of Properties Owned by Grantee

“Tax Lot 100”

A parcel of land lying in the Zara Sweet Donation Land Claim No. 68, and also in the Southeast one-quarter of Section 33, Township 17 South, Range 3 West of the Willamette Meridian, in Lane County, Oregon, said parcel being bounded on the Southerly boundary by the parcel of property described in that certain Warranty Deed wherein Dale Fischer, individually and as trustee for Alexandria Fischer Morse and David Dodd Fischer, appears as Grantor, and Lane County, a political subdivision of the State of Oregon, appears as Grantee, which Deed was recorded in Lane County Official Records on August 6, 1976, under Reception No. 76-40388, being bounded on the Easterly boundary by the parcel of property described in that certain Warranty Deed wherein Roy Jenkins and Edith Jenkins, appear as Grantors, and Cecil R. Armes and Elaine K. Armes, husband and wife, appear as Grantees, which Deed was Recorded December 22, 1972, Reception no. 33745, Lane County Official Records, being bounded on the North by the Southerly right-of-way line of Franklin Boulevard (McKenzie Highway), and being bounded on the West by that tract of land described in Deed to the State of Oregon, by and through its State Highway Division, Recorded July 29, 1942, Book 234, Page 292, Lane County Oregon Records, in Lane County, Oregon.

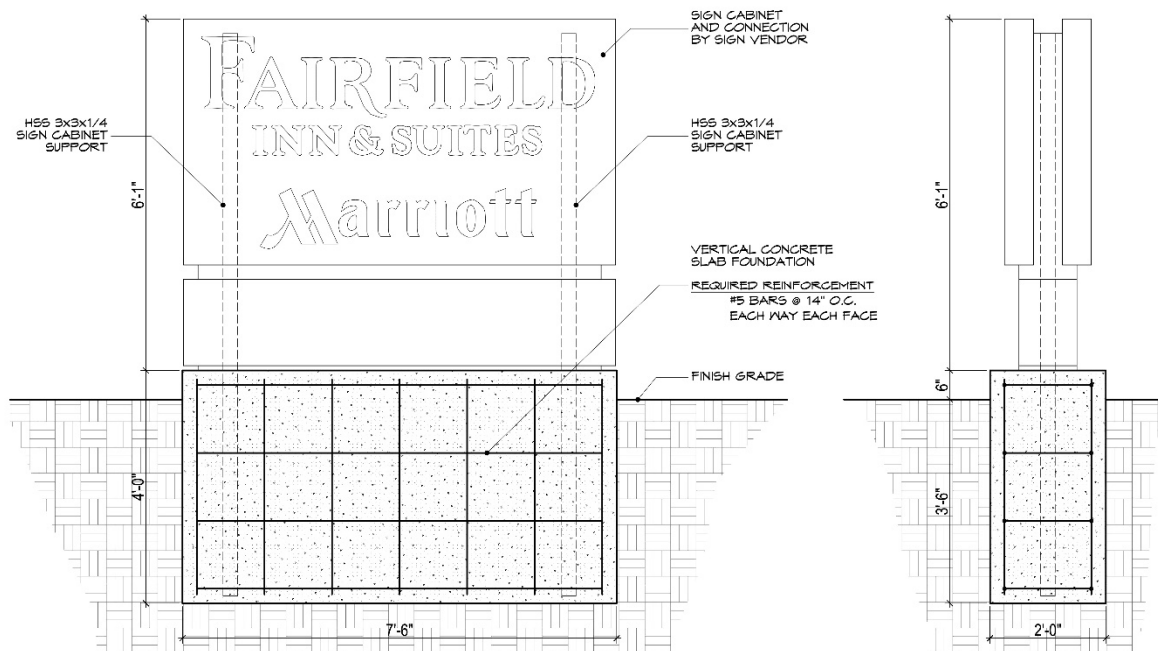
“Tax Lot 200”

A parcel of land lying in the Zara Sweet Donation Land Claim No. 68, also in the Southeast one-quarter of Section 33, Township 17 South, Range 3 West of the Willamette Meridian, said parcel being described as follows:

Beginning at the point on the Westerly line of that tract of land conveyed to State of Oregon, by and through its State Highway Commission, by Deed Recorded in Book 224, Page 292, Lane County Oregon Records, said point being opposite and 270.5 feet distant Southerly from (when measured at right angles to) the centerline of the Pacific Highway at Engineer's Station 195+83.5; said point also being 560.8 feet South and 1291.5 feet West of the Northeast corner of the Zara Sweet Donation Land Claim No. 68; thence South 16° 30' East along said Westerly property line 28.7 feet to an axle marking the Southwest corner of said property; thence South 72° 50' East along the Southerly line of said property 220.6 feet; thence North 16° 30' West along the Easterly line of said property 155.15 feet; thence South 72° 11' 30" West 183.5 feet to the Point of Beginning, in Lane County, Oregon.

[illegible]

7 MONUMENT SIGN PLAN



**LAND USE
REVIEW SET**
THIS DRAWING IS
NOT FOR
CONSTRUCTION
5.27.2016

